96-950 (3)

Supreme Court, U.S.
FILED
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CLERK

No.

IN THE
SUPREME COURT of the UNITED STATES
OCTOBER TERM, 1996

MICHAELINA ORTIZ,
Petitioner,

vs.

JOHN O. BUTLER COMPANY,
Respondent.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Andrey Bohdan Filipowicz
100 West Monroe
Suite 1401
Chicago IL 60603
312/578-1211

Attorney for Petitioner
Michaelina Ortiz

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICAELINA ORTIZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 93 C 1123
	)	
JOHN O. BUTLER COMPANY,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

JAMES F. HOLDERMAN, District Judge:

Plaintiff Micaelina Ortiz filed a complaint against defendant John O. Butler Company ("Butler") alleging retaliatory discharge in violation of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 ("Title VII") 42 U.S.C. Sec. 2000(e) et seq. (Count I), and termination in violation of the Age

Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. Sec. 621 et seq. (Count II). Defendant Butler has filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.[1] For the reasons stated below, defendant's motion for summary judgment is denied as to Count I and granted as to Count II.

BACKGROUND

Defendant Butler is a manufacturer and distributor of oral hygiene products.

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[1]Defendant has also filed a motion to strike portions of the affidavits of both plaintiff and Marie Robles, a former employee of Butler, arguing that certain statements are hearsay or based on speculation. The court finds that defendant's motion to strike is moot because plaintiff has filed amended affidavits curing the problems that defendant raised in its motion.

Plaintiff was employed at Butler from February 17, 1982, until she was terminated on April 6, 1992. Plaintiff claims that she was terminated in retaliation for complaints she made about the working conditions at Butler and because of her age. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission and received a right to sue letter on November 30, 1992.[2]

Plaintiff alleges that during her tenure at Butler she was exposed to a hostile work environment. Plaintiff alleges that she was sexually harassed by her immediate supervisor, Frank Williams. Plaintiff claims that her supervisor

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[2]See Complaint, Exhibit A.

continuously made lewd remarks to her such as "Hello beautiful legs, when are we going out" or "when are you going to let me come to your apartment." In addition, plaintiff alleges that her group leader, Earl Phillips, would intimidate workers through the use of foul, intimidating language, derogatory ethnic remarks, name calling and threats.

Plaintiff alleges that she, along with other Butler employees, asked both Williams and the President of Butler to met with them to discuss and remedy their allegedly hostile and unsatisfactory working conditions, but their requests were denied. After these request were denied, plaintiff alleges that two anonymous letters were submitted to management complaining about

the working conditions at Butler. The second letter accused Earl Phillips of "always getting fresh with the girls verbally and manually," and accused the Molding Department's supervisor, Frank Williams of knowing about Phillips' behavior but doing nothing and himself of being "fresh with us verbally."[3]

In response to these letters, Butler management decided that the company should conduct an audit of the Molding Department personnel to investigate the complaints made in the two letters. The audit consisted of Susan Bondy, Director of Human Resources, conducting individual employee interviews

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[3]See Statement of Undisputed Facts, Exhibit B.

during which the interviewer would ask questions about the employee's work environment.

At plaintiff's first interview, plaintiff stated that she had not heard anyone in management use foul language or make sexual comments. At a later interview, plaintiff denied that she was involved in the drafting of either of the two letters complaining about the working condition at Butler. In addition, at plaintiff's deposition she again denied being involved in the drafting of either letter. Plaintiff, however, now admits in an affidavit filed with the court in response to defendant's motion for summary judgment to having participating in the drafting of the second letter. Plaintiff states that

she lied at her interview and deposition about her involvement in the drafting of the second letter because she was physically afraid of Mr. Phillips and was worried about being fired if she confessed her role.[4]

After the audit was completed, Butler accused plaintiff of intentionally and maliciously creating and disseminating false claims of sexual harassment. Defendant suspended all the employees believed to be involved in the alleged creation of the falsehoods except for plaintiff, who was terminated on April 6, 1992. Plaintiff, who was forty-four at the time of her termination, claims the reason she was terminated, while other younger employee

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[4]See Ortiz Affidavit, par. 12, 20-26.

accused of the same conduct were merely suspended and demoted, was because of her age.

ANALYSIS

Under Rule 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fat and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Summary Judgment is inappropriate when there is a dispute over facts which might affect the outcome of the suit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 106 S. Ct. 2505, 2510 (1986). In ruling on a motion for summary judgment the evidence of the

non-movant must be believed, and all justifiable inferences must be drawn in the non-movant's favor. Id. at 2513. This court's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial.

However, when a party bears the burden of proof on an issue, that party may not simply rest on its pleadings to defeat summary judgment, but must affirmatively demonstrate with specific factual allegations that a genuine issue of material fact exists and requires a trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S. Ct. 2548, 2553 (1986). The party must do more than simply "show there is some metaphysical doubt as to the material

facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1356 (1986) (footnote omitted). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Id.

I. Retaliatory Discharge Claim

Plaintiff claims that she was terminated in retaliation for complaints she made about the allegedly hostile and unsatisfactory working conditions at Butler in violation of Title VII. Title VII provides:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees...because he had made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing

under this chapter.

42 U.S.C. Sec. 2000e-3(a). The Seventh Circuit applies the burden-shifting sexual discrimination analysis to retaliatory discharge claims. See Samuelson v. Durkee/French/Airwick, 976 F.2d 1111, 1114 (7th Cir. 1992). Under the burden-shifting formula, the plaintiff bears the initial burden of establishing a prima facie case of retaliatory discharge. Id. at 1113. Once the plaintiff meets that burden, the burden of production shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employee's discharge. If the employer is able to articulate a non-discriminatory reason for plaintiff's discharge, the burden shifts back to the employee to show that the employer's reasons

are merely a pretext for retaliatory discharge. Id. at 1114.

To establish a prima facie case of retaliatory discharge in violation of Title VII, plaintiff must show that: (1) she engaged in statutorily protected opposition; (2) she suffered adverse action by Butler; and (3) there is a casual link between her opposition and the adverse employment action. See Samuelson, 976 F.2d at 1114-15 (citing Collins v. Illinois 830 F.2d 692, 702 (7th Cir. 1987)). In order for the plaintiff's expression to be statutorily protected, the practice that plaintiff is challenging need not actually violate Title VII. "Instead, it is sufficient if the plaintiff has a reasonable belief that she is challenging conduct in violation of Title

VII." Holland v. Jefferson Nat'l Life Ins. Co., 883 F.2d 1307, 1314 (7th Cir. 1989) (citations omitted).

The Seventh Circuit has held that it is a violation of 42 U.S.C. Sec. 2000e-3(a) to fire an employee because she opposed discrimination even if she was mistaken and there was in fact no discriminatory conduct. Rucker v. Higher Educ. Aids Bd., 669 F.2d 1179, 1182 (7th Cir. 1982).

> "The mistake must, of course, be a sincere one; and presumably it must be reasonable...for it seems unlikely that the framers of TItle VII would have wanted to encourage the filing of utterly baseless charges by preventing employers from disciplining the employees who made them. But it is good faith and reasonableness, not he fact of discrimination, that is the critical inquiry in a retaliation case."

Id.

In this case, the evidence shows that plaintiff was first suspended and then later terminated, at least in part, because the defendant believed that she had intentionally and maliciously filed baseless charges against her supervisors.[5]

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[5]See Statement of Undisputed Material Facts, par\. 72-90 and Exhibit E. Defendant states that because so many employees identified plaintiff as someone who either had asked them to sign one of the letters describing the allegedly hostile work environment at Butler or who had written one of the letters, Butler management concluded that plaintiff clearly was involved in disseminating what they believed to be false claims regarding Williams and Phillips. Plaintiff was then notified that she was suspended for one day and demoted to a job in the production department with less pay "for making false statements and accusations with malicious intent." In addition, defendant states that plaintiff was later terminated because of her refusal to admit that she had falsely accused Williams and Phillips of sexual harassment and to accept responsibility for her behavior.

In Darnell v. Target Stores, 16 F.3d 174, 176 (7th Cir. 1994), the Seventh Circuit held that when a district court is faced with contradicting deposition testimony and affidavit statements from the same person, the conclusory statements in an affidavit cannot create a conflict with plain admissions in deposition testimony. The court went on to state that it is proper for a district court to rely on the deposition testimony and to disregard subsequent, contradictory affidavit statements of a witness on summary judgment because, "[i]nherently depositions carry an increased level of reliability." Id.

In this case, however, even if the court accepts as true plaintiff's deposition testimony that she did not write or

disseminate the letters complaining about sexual harassment at Butler, plaintiff is still able to prove a prima facie case of retaliatory discharge because the defendant admits that it believed that plaintiff had complained of sexual harassment and acted on this belief when suspending and terminating plaintiff.

In E.E.O.C. v. Ohio Edison Co., 7 F.3d 541, 543 (6th Cir. 1993), the Sixth Circuit held that Sec. 2000e-3(a) prohibits an employer from discriminating against third-parties, who have not actually engaged in protected activity themselves, in retaliation for a co-employee's protected opposition. The court stated that although the language of Section 2000e-3(a) indicates that Congress did not consider the

possibility of allowing a retaliation claim by a party who had not engaged in protected opposition, "the very clear intent of Congress would be undermined." if third-party reprisals were tolerated. Id.

The court found that in enacting Sec. 2000e-3(a), "Congress unmistakably intended to ensure that no person would be deterred from exercising his rights under Title VII by the threat of discriminatory retaliation." Id. Because "tolerance of third-party reprisals would, no less than tolerance of direct reprisals, deter persons from exercising their protected rights under Title VII," the court concluded that the provisions of Sec. 2000e3(a) prohibit third-party reprisals. Id. at 544. The court stated that even though the statute does no

specifically provide for a claim by a third-party who has not opposed discrimination, the majority of courts, including the Supreme Court, have been willing to construe the sections of Title VII broadly in order not to frustrate the statute's purpose which is to "prevent fear of economic retaliation from inducing employees 'quietly to accept [unlawful] conditions.'" Id. (quoting Mitchell v. Robert DeMario Jewelry Co., 361 U.S. 288, 292, 80 S. Ct. 332, 335 (1960)).

In fact, many courts have adopted interpretations of retaliation provisions in employment statutes, including Title VII, outside the literal terms of the statute in order to effectuate Congress's purpose of forbidding retaliatory activity. Ohio Edison, 7 F.3d 545. See e.g., Sauers v.

Salt Lake County, 1 F.3d 1122, 1128 (10th Cir. 1993) (action taken against an individual in anticipation of that person engaging in protected opposition to discrimination constitutes retaliatory discharge in violation of 42 U.S.C. Sec. 2000e-3(a)). Passer v. American Chemical Soc'y, 935 F.2d 322, 330 (D.C. Cir. 1991) (former employee could maintain an action under the ADEA's anti-retaliation provision); NLRB v. Retail Store Employees Union, Local 876, 570 F.2d 586, 590 (6th Cir.), cert. denied, 439 U.S. 819 (1978) (anti-retaliation provision of the National Labor Relations Act prohibited an employer from firing an employee who refused to testify at a Board hearing despite the fact that the statute, by its terms, applied only

to employees who had "filed charges or given testimony," and did not addresses a refusal to give testimony).

The court finds that under this line of though the phrase in Sec. 2000e-3(a), "because he has opposed any practice made an unlawful employment practice under this subchapter," should be broadly construed to include a claim based upon an action taken against an employee because of an employer's belief that the employee engaged in opposition to sexual harassment. This action is no less retaliatory under then statute than an action taken because an employee actually engaged in protected opposition. In light of the purpose of Sec. 2000e-3(a)--to encourage persons to freely exercise their protected rights under Title

VII by preventing the fear of retaliation--the court finds that this form of retaliation falls within the scope of 42 U.S.C. Sec. 2000e-3(a).

If plaintiff intentionally and maliciously filed baseless charges against her supervisors as defendants argues, Title VII would not have prevented defendant from terminating plaintiff. Plaintiff has, however, presented evidence to this court indicating that her supervisors may have engaged in sexually harassing behavior.[6]

Because a genuine issue of fact exists as to whether plaintiff intentionally and maliciously filed baseless charges of sexual

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[6]See Ortiz Affidavit, par. 5 - 16 and Robles Affidavit, par. 5.

harassment against her supervisors as defendant argues, this court cannot rule as a matter of law that plaintiff has failed to prove a prima facie case of retaliatory discharge. When plaintiff's evidence is viewed in light most favorable to her, as this court must do on summary judgment, a reasonable fact finder could conclude that plaintiff reasonably believed that she challenged conduct which violated Title VII and that she was terminated for her opposition. See Holland, 883 F.2d at 1314-15. Therefore, defendant's motion for summary judgment is denied as to Count I.

II. ADEA Claim

Plaintiff also alleges that she was fired because of her age. For plaintiff to successfully prove an ADEA violation, she

must first establish that "but for" the defendant's motive to discriminate against her because of her age, she would not have been discharged. Konowitz v. Schnadig Corp., 965 F.2d 230, 232 (7th Cir. 1992). Plaintiff may prove age discrimination by either of two methods. She may present direct evidence that her age was the determining factor in her discharge, or she may employ the burden-shifting method of proof set forth by the United States Supreme Court for Title VII cases in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973), later extended by the Seventh Circuit to ADEA cases. See McCoy v. WGN Continental Broadcasting Co., 957 F.2d 368, 371 (7th Cir. 1992) (quoting Oxman v. WLS-TV, 846 F.2d 448, 452 (7th Cir. 1988)).

Under the burden-shifting method of proof (the method used by plaintiff in this case), plaintiff may establish a prima facie case of discrimination by showing that she was:

> (1) within a protected class (age 40 or older); (2) performing her job according to her employer's legitimate expectations; (3) the subject of a materially adverse employment action; and (4) treated less favorably than younger employees.[7]

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[7]The Seventh Circuit in Kralman v. Illinois Dept. of Veterans' Affairs, No. 93-3398, slip op. at 10 (7th Cir. April 20, 1994), rejected a bright-line test that in order to establish a prima facie case of age discrimination the plaintiff was required to show that plaintiff was replaced by a person outside of the protected class. The court recognized, however, "that there may be some circumstances in which a court may find that the difference in ages between the plaintiff and the favored employee are not sufficient to create a reasonable inference of age discrimination." Id.

Robinson v. PPG Indus., Inc., No. 92-3000, slip op. at 6 (7th Cir. May 4, 1994) (citations omitted).

"If the plaintiff succeeds in establishing a prima facie case, this creates a rebuttable presumption of discrimination, and the burden of production shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employee's discharge." Anderson v. Baxter Healthcare Corp., 13 F.3d 1120, 1122 (7th Cir. 1994). Once the employer has articulated non-discriminatory reasons for plaintiff's discharge, the burden shifts back to the employee to show that the employer's reasons are merely a pretext for age discrimination. Id. (citing Weihaupt v. American Medical Ass'n, 874 F.2d 419, 426-27

(7th Cir. 1989)).

To establish that defendant's justification is a pretext, plaintiff must show: 1) that a discriminatory reason more likely motivated the employer; or 2) that the employer's reasons are unworthy of credence. See Anderson v. Stauffer Chem. Co., 965 F.2d 397, 402 (7th Cir. 1992). Plaintiff may demonstrate that defendant's reasons are unworthy of credence in any of three ways: 1) by showing that the reasons have no basis in facts; (2) by showing that the reasons did not actually motivate plaintiff's discharge; or (3) by showing that the reasons were insufficient grounds for plaintiff's discharge. Weihaupt, 874 F.2d at 428.

In this case, plaintiff has chosen to

prove her ADEA claim under the burden-shifting method. Because this court finds defendant's reasons for plaintiff's discharge not to be a pretext for age discrimination, plaintiff's establishment of a prima facie case as to her discharge is inconsequential. The evidence in this case clearly shows that plaintiff was first suspended and later discharged because the defendant believed that she had intentionally and maliciously filed baseless charges against her supervisors and plaintiff refused to admit that she had falsely accused her supervisors of sexual harassment. Plaintiff does not dispute this evidence, but in fact relies on it as a basis for her retaliatory discharge claim.

Plaintiff has offered no evidence

indicating that plaintiff's age was a factor in her termination. The evidence clearly shows that two other younger employees (one in her early forties and the other in his late twenties) accused of the same conduct were merely suspended and demoted instead of being terminated because, unlike plaintiff, they acknowledged their involvement in writing the letters accusing their supervisors of sexual harassment and affirmed their loyalty to the company.[8] The court therefore finds that the defendant is entitled to summary judgment in its favor on Count II of plaintiff's complaint because plaintiff has not presented sufficient

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[8]See Statement of Undisputed Material Facts, par. 82-85.

evidence to this court which suggests that age was a factor in her discharge or which shows that defendant's reasons for plaintiff's discharge were a pretext for age discrimination.

CONCLUSION

For the reasons stated above, defendant's motion for summary judgment is DENIED as to Count I and GRANTED as to Count II. Defendant's motion to strike is MOOT. The parties are strongly urged to discuss the settlement of this case and report on the status hereof on June 27, 1994 at 10 a.m.

ENTER:

_____
JAMES F. HOLDERMAN
United States District Judge

DATED: May 26, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICAELINA ORTIZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 93 C 1123
	)	
JOHN O. BUTLER COMPANY,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

JAMES F. HOLDERMAN, District Judge:

Plaintiff Micaelina Ortiz filed a complaint against defendant John O. Butler Company ("Butler") alleging retaliatory discharge in violation of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 ("Title VII"), 42 U.S.C. Sec. 2000(e) et seq. Presently before the court is defendant

Butler's motion for summary judgment based on mootness of plaintiff's claim. For the reasons stated below, defendant's motion for summary judgment is granted.

BACKGROUND

The following facts are undisputed by the parties. Defendant Butler is a manufacturer or oral hygiene products. Plaintiff was employed at Butler from February 17, 1982, until she was terminated on April 6, 1992. Plaintiff claims that she was terminated in retaliation for complaints she made about being sexually harassed by her immediate supervisor, Frank Williams and her group leader, Earl Phillips. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission and received a right to sue letter on November

30, 1992.[1]

In mid-March, 1992, two anonymous letters were submitted to Butler's management complaining about the working conditions in the Molding Department at Butler.[2] The letters contained in various accusations against the Molding Department supervisors including that the employees were reprimanded with obscenities and threatened with mental and verbal abuse.[3] In response to these letters, Butler management conducted an audit of the Molding Department

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[1]See Complaint, Exhibit A.

[2]Uncontested Facts, par. 10-16.

[3]Id.

personnel to investigate the complaints made in the two letters. The audit consisted of Susan Bondy, Director of Human Resources, and William Spangler, Director of Operations, jointly conducting individual interviews of the Molding Department employees over a two week period. The interview consisted of questions about the employee's work environment in general and any incidents of sexual harassment.[4]

During the audit the employees did not confirm the allegations of discrimination made in the two letters. While several employees complained about Phillips' harsh language and Williams' passive supervision of Phillips, each of the first-shift employ-

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[4] Id., at par. 28-29.

ees, including Plaintiff, specifically denied that any of the supervisors ever had discriminated against them or made sexual comments to them or to others.[5]

In addition, during their audit interviews several employees identified plaintiff as having written one of the two anonymous letters, having asked them to sign the letter, or having asked them to lie about incidents of sexual harassment during the audit interviews so that their supervisors would be fired. In order to investigate these accusations, Bondy and Spangler conducted a follow-up interview with plaintiff.

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[5]At plaintiff's first interview, plaintiff stated that she had not heard anyone in management use foul language or make any sexual comments.

In the second interview, plaintiff denied that she was involved in the drafting of either of the two letters complaining about the working conditions at Butler and denied that she solicited anyone to sign either letter.[6]

After the audit was completed, Butler accused plaintiff and others of intentionally and maliciously creating and dissemi-

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[6]In addition, at plaintiff's deposition she again denied being involved in the drafting of either letter. Plaintiff, however, later admitted in an affidavit field with the court in response to defendant's first motion for summary judgment to having participating in the drafting of the second letter. Plaintiff stated that she lied at her interview and deposition about her involvement in the drafting of the second letter because she was physically afraid of Mr. Phillips and was worried about being fired if she confessed her role.

nating false claims of sexual harassment in order to discredit their supervisors and to get them fired. Defendant sus-pended all the employees, including plaintiff, believed to be involved in the alleged creation of the falsehoods. At individual suspension meetings these employees were advised of the one-day suspension and were asked to reflect upon their conduct and to decide whether they were committed to Butler or whether they wished to resign and receive severance pay.

After the suspension period, Bondy and Spangler again met privately with each of the three employees who had served their suspensions. The two other employees admitted their involvement in the letter writing scheme but plaintiff denied that she had

done anything. Plaintiff was then informed that because of her unwillingness to accept any responsibility for her conduct relating to the letters and her continuing inability to get along with her co-employees, her employment at Butler was terminated.

ANALYSIS

In her Supplemental Damage Statement to the Final Pretrial Order plaintiff identifies the damages which she asserts that she is entitled to recover from defendant Butler. Those damages include: 1) lost wages and benefits in the amount of $15,350.40, less the settlement of the N.L.R.B. claim in the amount of $16,000, resulting in total damages in a negative amount of $649.60; 2) "Increase Burden of Proof" in the amount of $100,000; and 3) punitive damages in the

amount of $300,000.[7]

Defendant argues that even assuming the existence of a valid claim of retaliatory discharge, plaintiff's claim should be dismissed as moot because plaintiff has no redressable injury. In support of its argument defendant contends that any damages relating to an increased burden of proof are not recoverable under Title VII, and that plaintiff is not entitled to an award of punitive damages as a matter of law because the undisputed facts cannot support a finding that Butler acted with malice or with reckless indifference to plaintiff's federally protected rights in terminating plaintiff. Therefore, defendant argues, because

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[7]Final Pretrial Order, Ex. N.

the only damages to which plaintiff may be entitled if she ultimately prevailed at trial are compensatory damages for lost wages and benefits which plaintiff has already recovered by defendant's payment of $16,000, plaintiff has nothing to gain from winning the case and her claim is moot. See Tucker v. United States Department of Commerce, 958 F.2d 1411, 1416 (7th Cir. 1992) (plaintiff must show some probability of a tangible benefit from winning the suit in order to demonstrate an Article III case or controversy).

A. "Increase Burden of Proof"

Plaintiff has filed a lawsuit against Butler in the Circuit Court of Cook County alleging negligence in connection with injuries plaintiff allegedly sustained in a

fall on Butler premises eight months after plaintiff's termination. Plaintiff argues that she is entitled to $100,000 in damages in this case due to the increased burden of proof required to successfully prove her state negligence action. In support of her argument plaintiff states that if she had not been wrongfully discharged from her employment at Butler she would be sure to recover damages as a result of her fall on the company premises as alleged in her state court complaint under existing worker's compensation law. Instead, plaintiff argues, because she was terminated eight months before her fall, she now has the greater burden of having to prove negligence on Butler's part in order to recover for her alleged injuries sustained in the fall.

Plaintiff contends she should be allowed to recover damages in this Title VII case because of the additional difficulties she has or will encounter associated with the greater burden of proof she must sustain at the trial of her case pending in the Circuit Court of Cook County.

The court rejects plaintiff's argument and finds that any damages resulting from any increased burden of proof her case in the Circuit Court of Cook County are not recoverable in this Title VII action. First, there is no causal relationship between plaintiff's fall and plaintiff's termination. Second, the amount that plaintiff seeks for any damages resulting from this increased burden of proof are based on speculation and unfounded assumptions.

Compensatory damaged under Title VII may only be recovered for any proximate consequences which can be established with requisite certainty. Plaintiff may pursue any damages she may have suffered as a result of her alleged fall in her state law negligence action in the Circuit Court of Cook County not in the Title VII action.

B. Punitive Damages

Section 102 of the Civil Rights Act of 1991, 42 U.S.C. Sec. 1981(a)(1), expanded the relief available to victims of employment discrimination by permitting plaintiffs to recover compensatory and punitive damages for certain Title VII violations, whereas only back pay and other equitable remedies had previously been available. 42 U.S.C. Sec. 1981a(a)(1);

Landgraf v. USI Film Prods., 114 S. Ct. 1483, 1490 (1994). Although punitive damages may properly be awarded in Title VII retaliatory discharge cases, they are only appropriate in an egregious case of intentional discrimination when the defendant engaged in the unlawful employment practice with actual malice, or with reckless indifference as to indicate a wanton disregard for the rights of others. Hudson v. Soft Sheen Prods., Inc., 873 F. Supp. 132 136 (N.D. Ill. 1995) (citing S.Rep. No. 315, 101st Cong., 2d Sess. at 55 (1990)); See also, Jackson v. Bunge Corp., 40 F.3d 239, 246 (7th Cir. 1994). Moreover, while the amount of punitive damage award is a jury question, the preliminary question of whether the facts of a particular case

justify the imposition of punitive damages is a question of law. Id. If plaintiff fails to present any evidence of an employer's wanton misconduct, then punitive damages will not be available as a remedy for plaintiff's retaliatory discharge claim. Id.

In this case the court finds that plaintiff has failed to present any evidence that Butler terminated plaintiff's employment with actual malice or reckless indifference to plaintiff's rights. After receiving the anonymous letters complaining about the working conditions in the Molding Department, Butler management conducted an audit of the Molding Department personnel to investigate the complaints. There is no evidence in the record to support any

determination other than the audit was conducted fairly and conscientiously. During the audit, the employees including plaintiff, not only did not confirm the allegations of discrimination made in the two letters but in fact denied the allegations. Plaintiff has presented no evidence to indicate that Butler management's efforts to investigate the allegations of sexual harassment were a sham or that Butler management ever had actual knowledge of any sexual harassment by personnel in the Molding Department.

In addition, several employees identified plaintiff as having written one of the two anonymous letters, having asked them to sign the letter, or having asked them to lie about incidents of sexual

harassment during the audit interviews so that their supervisors would be fired. Based on this information, which Butler received from several employees, coupled with plaintiff's unwillingness to accept any responsibility for her conduct relating to the letters, as well as plaintiff's continuing inability to get along with her co-employees, plaintiff's employment at Butler was terminated.

Plaintiff has presented no evidence indicating that Butler's discharge of plaintiff was for any reason other than Butler's stated belief that plaintiff had intentionally filed baseless charges of sexual harassment against her supervisors in order to get her supervisors fired. Therefore, the court finds that because that

record demonstrates that Butler did not act with actual knowledge that it was violating any of plaintiff's federally protected rights or with reckless disregard of these rights in terminating plaintiff's employment with Butler, plaintiff is not entitled to an award of punitive damages as a matter of law.

Because plaintiff has received all of the relief to which she is legally entitled, the court concludes that she has no possibility of receiving a tangible benefit from proceeding to trial with this suit. Therefore, pursuant to Rule 1 of the Federal Rules of Civil Procedure which mandates that the Federal Rules of Civil Procedure "be construed and administered to secure the just, speedy, and inexpensive determination

of every action," the court finds that since no recovery can under the law be obtained by plaintiff and no material issue of fact remain for trial, plaintiff's Title VII action must be dismissed.

CONCLUSION

For the reasons stated above, defendant's motion for summary judgment is GRANTED. All pending motions are MOOT. This case is DISMISSED IN ITS ENTIRETY.

ENTER:

JAMES F. HOLDERMAN
United States District Judge

DATED: July 6, 1995